While if the case against the defendant fails, the plaintiff cannot sue the defendant's vendees. *Kessler* v. *Eldred*, 206 U. S. 285. Though equity will therefore enjoin future suits, yet, on grounds of comity, the court is reluctant to interfere with suits already pending. *Kelley* v. *Ypsilanti, etc. Co.*, 44 Fed. 19.

INSURANCE — CONSTRUCTION OF PARTICULAR WORDS AND PHRASES IN STANDARD FORMS — "SOLE AND UNCONDITIONAL OWNERSHIP." — The insured, a boat-builder, agreed to build a boat, the buyer to advance sums of money as the work progressed. In the event of the completion of the boat being prevented, "all materials bought for the boat" were "to belong" to the buyer and he was to "own an interest in the boat shop" amounting to the excess of moneys paid over the cost of the materials. While the boat was in process of construction, the builder insured the property under a standard policy which was to be void if the insured's interest was other than "sole and unconditional ownership." The boat, when nearly completed, was destroyed by fire. *Held*, that the insured can recover on the policy. *Lloyd* v. *North British & Mercantile Ins. Co.*, 161 N. Y. Supp. 271 (App. Div.).

An insurance policy with the standard clause of "unconditional ownership" is void if the legal title, or even the equitable ownership, of the property is not in the insured when the policy is executed. *Skinner, etc. Co.* v. *Houghton*, 92 Md. 68, 48 Atl. 85; *Hamilton* v. *Dwelling House Ins. Co.*, 98 Mich. 535, 57 N. W. 735; *Imperial Fire Ins. Co.* v. *Dunham*, 117 Pa. St. 460, 12 Atl. 668. Now according to the English decisions, under a contract like that in the principal case, the legal title to the boat passes to the buyer while it is being built, *pari passu*, with the payment of installments. *Clarke* v. *Spence*, 4 A. & E. 448; *Wood* v. *Bell*, 5 E. & B. 772. But see *Reid* v. *Macbeth*, [1904] A. C. 223. But the American cases, following the more logical view, have uniformly held that under such a contract legal title passes only upon the appropriation of the completed boat to the buyer. *Clarkson* v. *Stevens*, 106 U. S. 505; *Wright* v. *Tetlow*, 99 Mass. 397; *Andrews* v. *Durant*, 11 N. Y. 35. See WILLISTON, SALES, § 275. The question then arises whether the clause in the contract, that title to the materials shall pass to the buyer if the completion of the boat is prevented, can divest the owner of "unconditional ownership." That it is possible to create by an *inter vivos* transaction a future estate in a chattel personal, if such is the intention of the parties, would seem to be established. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., § 854. *A fortiori*, an executory estate by way of a conditional limitation must be possible. Yet such is a property interest and in conflict to "unconditional ownership." But that effect is not conceivable in the principal case, for undoubtedly at the time of the making of the contract the title to the chattels in question was not yet in the grantor. Obviously no equitable title could pass, when the grantor did become the owner, on a principle somewhat akin to *Holroyd* v. *Marshall*, for the condition precedent to the vendee getting a right was not fulfilled until the goods were destroyed. In any case it is probable that equity looking at the substance of the agreement would decide that as, after all, the vendee was only seeking security for his advances, any right he might acquire in the property would be in the nature of a lien, in spite of the contrary terminology of the contract. *Cf. Hurley* v. *Atchison, etc. Ry. Co.*, 213 U. S. 126; *Cooper* v. *Brock*, 41 Mich. 488, 2 N. W. 660; *Albert* v. *Van Frank*, 87 Mo. App. 511. But it is well settled that a mere lien or incumbrance on the property is not violative of the "unconditional owner" clause in an insurance policy. *Dolliver* v. *St. Joseph, etc. Ins. Co.*, 128 Mass. 315; *Carrigan* v. *Lycoming Fire Ins. Co.*, 53 Vt. 418. See 1 MAY, INSURANCE, 4 ed., § 287.

INTERSTATE COMMERCE — POWER OF THE COMMISSION TO REQUIRE TANK CARS. — The Interstate Commerce Commission ordered the Pennsylvania Railroad to furnish tank cars in sufficient numbers to transport a complainant's

shipments of oil. The railroad brought suit to enjoin this order and a federal court issued the writ. *Held*, that the order was *ultra vires*, and the injunction was properly issued. *United States* v. *Pennsylvania R. Co.*, U. S. Sup. Ct., Oct. Term, 1916, Nos. 340 and 341.

For a discussion of this case, see NOTES, p. 381.

INTERSTATE COMMERCE — RECOVERY IN STATE COURT FOR INDIRECT DAMAGE TO BUSINESS DUE TO ILLEGAL OVERCHARGE — FEDERAL REMEDY EXCLUSIVE. —The defendant railroad, in interstate business, collected from the plaintiff a charge in excess of that provided for by the Interstate Commerce Commission. As reparation therefore, the commission had ordered the railroad to pay the plaintiff $6198, which was done. The present action is brought in a Kentucky court under the common law to recover for additional damage done the plaintiff's business as a result of the overcharge. *Held*, that the plaintiff cannot recover. *Louisville, etc. R. Co.* v. *Ohio Valley Tie Co.*, U. S. Sup. Ct., Oct. Term, 1916, No. 66.

It is axiomatic that where Congress, under the power reserved to it in the federal Constitution, legislates in regulation of interstate commerce, the laws of the several states covering the same field, whether formally abrogated or not, cease to have any force. See *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1, 210; *Missouri, etc. Ry. Co.* v. *Haber*, 169 U. S. 613, 626; *Reid* v. *Colorado*, 187 U. S. 137, 146. The sole question presented by the principal case is whether or not Congress has by the Interstate Commerce Act taken over the entire field of relief for violations of that Act, or has provided merely for the refunding of the overcharge and certain penalties, leaving to the several states the matter of redress for general damage resulting to the plaintiff's business. The Supreme Court of Kentucky took the latter view. *Louisville, etc. R. Co.* v. *Ohio Valley Tie Co.*, 161 Ky. 212, 170 S. W. 633. By § 8 of the Act it is provided that in case of a violation of its provisions "such common carrier shall be liable . . . for the full amount of damages sustained in consequence of any such violation." And § 9 provides that the remedy is to be sought before the Commission or a federal court. So it has been held that the Commission has jurisdiction to give whatever damage the plaintiff has actually suffered. *Pennsylvania R. Co.* v. *International Coal Mining Co.*, 230 U. S. 184, 202, 203; *Meeker* v. *Lehigh Valley Coal Mining Co.*, 236 U. S. 412, 429. And the Act, and not the common law, determines the extent of the damages. *Pennsylvania R. Co.* v. *Clark Brothers Coal Mining Co.*, 238 U. S. 456, 472. And § 16 further provides that in case an order by the Commission to pay money remains unpaid, suit thereon may be brought in a state court, inferentially declaring that suit would not lie where the order had been performed. These sections seem to indicate a clear purpose by Congress to commit to the Commission and federal courts the entire field of redress for violations of the Act.

JUDGMENTS — *RES JUDICATA* — CRIMINAL LAW — FORMER JEOPARDY — JUDGMENT ON PLEADING A BAR TO SECOND PROSECUTION. — A defendant, indicted for conspiracy to violate the Federal Bankruptcy Act, pleaded the special statute of limitations provided in that act. The plea was sustained. A later decision, in other proceedings, took the offense of conspiracy outside the operation of this special bar. A second indictment being brought, the defendant pleaded in bar the earlier judgment in his favor. The lower court sustained this plea. The government thereupon brings a writ of error. *Held*, that the plea was good. *United States* v. *Oppenheim*, U. S. Sup. Ct., Oct. Term, 1916, No. 412.

Except under statutes, no similar case on a judgment on a plea to the indictment seems to have arisen. It has been held, however, that a new indictment is not barred by a judgment sustaining a demurrer going to the merits